



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,795	12/09/2003	Terry S. Bienstock	CCCI 0108 PUS	4949
50764 7590 11/24/2008 BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075				
EXAMINER				
PARRA, OMAR S				
ART UNIT		PAPER NUMBER		
2421				
MAIL DATE		DELIVERY MODE		
11/24/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/731,795

**Applicant(s)**

BIENSTOCK, TERRY S.

**Examiner**

OMAR PARRA

**Art Unit**

2421

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07/22/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 07/22/2008 have been fully considered but they are not persuasive.

In response to applicant's arguments:

Applicant argues that the "Office has not specifically cited the text that discloses...*'providing backdrop programming on the PEG channel'...*" and that "... the proposed combination fails to teach that the backdrop programming on the PEG channel *'being generally local interest programming'...*", (Remarks: pages 3, 4 and 6). To this matter, the examiner respectfully disagrees.

Hugenberg's reference was presented in previous Office Action with the purpose of showing that PEG channels are commonly part of the channel line-up that is sent to the users ([0003]; [0036]-[0037]; [0042]). Hugenberg teaches having PEG channels with programming (the content that is inherently sent on said channels) that is sent to all the users from the headend along with the rest of the channels in a transport stream ([0037]; [0042]). The fact that these PEG channels are sent to everyone, makes them or shows that the headend or cable provider believes that this content is of general interest.

On the other hand, Hane's reference was presented since it teaches that local headends (local command servers 52, Fig. 1, headends that only receive serve some geographical areas or communities, 50A, 50B, Fig. 1; [0037]) receive content from national headends ([0050]-[0051]; [0057]-[0058]; [0068]-[0070], where, for example, the

received Citibank commercial, is substituted with other locally produced content) and based on availability, local produced content such as ads, local programs, political content programs, etc, are introduced to supplant content received from the national headend ([0050]-[0051]; [0057]-[0058]; [0068]-[0070], where, for example, the received Citibank commercial, is substituted with other locally produced content). Hane teaches receiving content from national centers or headend which include, as taught by Hugenberg to be common, PEG channels and content in their line-up. Given that there is no technical difference between a PEG channel and the rest of the channels or programming, Hane's invention is able to preempt, if available, the nationally received PEG content with the locally-produced content.

Therefore, based on the explanations above for clarifying the examiner's posture, the examiner believes that the art of record as a whole cover all the limitations of the applicant's invention as claimed.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-14 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Hugenberg et al. (hereinafter 'Hugenberg', Pub. No. 2003/0140353) in view of Hane (Pub. No. 2006/0041921).

Regarding claims 1 and 8, Hugenberg teaches that the method for a regular cable television network to provide public, educational and governmental (PEG) programming pursuant to an agreement with a local franchising authority for a local area providing a PEG channel in the channel lineup with respective backdrop programming for each local area as required by the corresponding local franchising authority agreement is well known in the art ([0003]; [0014]; [0036]-[0037]; [0042], **where PEG channels are well known in the art as being part of the cable television programming and where to function in a local area, permission from local authorities are inherently needed**). On the other hand, Hugenberg does not explicitly teach:

for each local area having a PEG channel, determining an availability of locally produced PEG programming; and

when locally produced PEG programming is available and intended for local broadcast in a particular local area having a PEG channel, preempting the backdrop programming and providing the locally produced PEG programming on the PEG channel in the particular local area thereby providing locally produced PEG programming against a backdrop of general local interest programming provided by the cable television network.

However, in an analogous art, Hane teaches a system and method for distributing national and locally produced content, where availability of local or regional content is checked and inserted to be presented to the users after a commitment of transmission (Abstract; [0050]-[0051]; [0057]-[0058]; [0067]-[0070]). The content is not

limited to ads as used in the cited example, but locally produced news updates, political content programs, data, etc ([0043]-[0045]; [0076]-[0078]). Additionally, Hane teaches that any person or entity is able to post content but after approval ([0043]-[0045];[0076]-[0078]; [0081]).

Therefore, it would have been obvious to an ordinary skilled in the art at the time of the invention to have modified the feature of Hugenberg's invention of collecting PEG content from the local areas and send it send it back with the rest of the content to respective local areas with Hane's feature of checking for locally produced content and insert it to the national content for the benefit of saving upload (when sending the content to the national facility) and download (sending national and regional content to local areas) bandwidth and for further serving a community with content that is closer to its interests (Hane: [0014]).

Regarding claims 2-4 and 9-11, the combined teachings of Hugenberg and Hane teach PEG content to be created by local, educational and governmental public access to the cable television network (**Hugenberg: Local content for a PEG channel is collected from local producers, [0003]; [0014]; [0036]-[0037]; [0042]. Hane: Anyone outside the cable television network can pay for adding their content shown to the public through cable programming; which includes local, educational and governmental content creators, [0043]-[0045]; [0076]-[0078]).**

Regarding claims 5 and 12, the combined teachings of Hugenberg and Hane teach wherein the same general local interest programming is provided on the PEG channels for multiple local areas **(Hugenberg: [0003]; [0014]; [0036]-[0037]; [0042]).**

Regarding claims 6 and 13, the combined teachings of Hugenberg and Hane teach wherein the cable television network includes a video on demand (VOD) platform, the VOD platform including a library of locally produced PEG programming, the method further comprising providing locally produced PEG programming on demand with the VOD platform **(Hane: The local content to be inserted to the cable programming can be on-demand, [0058]. All the local content is stored in local databases, [0058]).**

Regarding claims 7 and 14, the combined teachings of Hugenberg and Hane teach wherein the cable television network includes a high speed data (HSD) platform, the HSD platform including a library of locally produced PEG programming, the method further comprising providing locally produced PEG programming on demand with the HSD platform **(20, Fig. 1; [0036]; [0043]; [0058]. All the local content is stored in local databases, [0058]).**

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OMAR PARRA whose telephone number is (571)270-1449. The examiner can normally be reached on 9-6 PM (M-F, every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John W. Miller/  
Supervisory Patent Examiner, Art Unit 2421

OP